

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Wind Turbine Industries Corp.,

Plaintiff,

v.

ORDER

Civil No. 09-36 (MJD/SRN)

Jacobs Wind Electric Company, Inc.,

Defendant.

William D. Schultz, Merchant & Gould, Counsel for Plaintiff.

Jon Erik Kingstad, Counsel for Defendant.

This matter is before the Court on Defendant's request to file a motion for reconsideration of this Court's Order dated March 23, 2010 denying Defendant's motion for partial summary judgment.

The Local Rules for the District of Minnesota provide that a motion to reconsider can only be filed with the Court's express permission, and then, only "upon a showing of compelling circumstances." L.R. 7.1(g). The district court's decision on a motion for reconsideration rests within its discretion. Hagerman v. Yukon Energy Corp., 839 F.2d 407, 413 (8th Cir. 1988).

Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. The nonmovant has an affirmative duty to come forward to meet a properly supported motion for summary judgment. . . . Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time.

Id. at 414 (citation omitted). The Court has reviewed its March 23, 2010 Order and concludes that it contains no manifest errors of law or fact. The Court did not rule on the merits of the fraud claim. Rather, the Court only addressed whether Plaintiff plead the fraud claim with sufficient particularity.

Defendant further asserts reconsideration is appropriate because of new evidence that could not have been adduced when the motion was first brought. Again, the Court denied the motion for summary judgment - not on the merits - but on its determination that Plaintiff plead the fraud claim with sufficient particularity. The newly discovered evidence has no bearing on whether Plaintiff sufficiently plead the fraud claim. Accordingly, Plaintiff's request to file a motion for reconsideration will be denied.

IT IS HEREBY ORDERED that Defendants' request to file a motion for reconsideration is DENIED.

Date: April 6, 2010

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court

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